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D.B. CIVIL SPECIAL APPEAL NO.923/2006.

DATED :21/12/2006.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS J.

Mr.S.P.Sharma for appellant;.

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Having heard learned counsel for the appellant we are of the opinion that pursuant to this litigation it is not bonafide that the petitioner is claiming for determination of amount due from, when admitted fact is that petitioner knows the date on which the loan was disbursed to him, the amount of loan disbursed and the rate of interest payable thereon. He also is aware that he has not paid any sum by way of repayment. It was mere a case of arithmetic calculation inasmuch as nothing was paid by the appellant before he has approached to this Court. It was only by way of indulgence that the Court has granted some respite to the petitioner by directing him to pay Rs.1,00,000/- immediately so that he may be saved from coercive process being taken against him. Having paid Rs.1,00,000/- the petitioner/appellant is now banking upon a hyper technical ground that actual amount due from the petitioner ought to be determined before taking recourse to recovery proceedings. In this regard the fact about receipt of demand notice in the sum of Rs.3,73,686/- dated 19.02.2004 has not been in dispute. Apparently, a specific sum was demanded from the petitioner on account of principal sum and interest payable thereon.

If the petitioner was bonafide in his attempt he could have clearly come out with a case that the correct computation of interest on out standing principal has been wrongly calculated and as per computation envisaged under terms of loan what amount of interest actually remains due. Without raising any such dispute which petitioner himself could have done, to delay the recovery of amount by calling upon the respondent to determine the amount payable by the appellant to Bank is not a bonafide plea. Instead of taking stand on merit, the appellant seeks to prolong repayment of loan on very technical ground, we are of the opinion that in the facts and circumstances of the case there is no room to invoke extra ordinary jurisdiction in favour of the appellant.

Accordingly, the appeal fails and is hereby dismissed.

[GOPAL KRISHAN VYAS],J. **[RAJESH BALIA], J.**

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